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D. Aguilarino CivPeru

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191229

DATE: June 1, 1978

**MATTER OF: Endre Fred Bogar - Downgrading -
Saved Compensation**

DIGEST: Employee of Internal Revenue Service was reduced in grade as result of selection for position at district office and was not provided salary retention under 5 U.S.C. § 5337. Employee is entitled to salary retention where employing office advertised twice for job applicants, second announcement on a national basis, and only two qualified individuals applied and claimant was only applicant possessing skills and knowledge desired by employing office. On basis of record agency has not established that it did not have a special recruitment need and that this was not paramount factor in downgrading. See 56 Comp. Gen. 199 (1976).

This action arises out of the claim by Mr. Endre Fred Bogar, an employee of the Internal Revenue Service (IRS) for salary retention incident to his selection for a position as a Supervisory Revenue Officer grade GS-11 with the Greensboro, North Carolina, district office.

The record indicates that at the time of his selection for employment with the Greensboro district office, Mr. Bogar was employed as a grade GS-13 Staff Program Analyst at IRS headquarters in Washington, D.C. Prior to his employment in Washington, D.C., Mr. Bogar served in the field as an IRS Revenue Officer. Mr. Bogar states that he was interested in eventually advancing beyond his grade GS-13 position and that he attempted to obtain a position as a Staff Manager in a district office. Mr. Bogar was apparently advised upon his nonselection for several positions that he needed experience as a supervisor in a district office in order to compete successfully for a position as a Line Manager.

On December 2, 1974, the Greensboro district office of the IRS, advertised, within IRS on a nation-wide basis, for applicants for the position of Supervisory Revenue

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Officer grade GS-1169-11. This position vacancy was initially advertised on a district-wide level, but only one applicant, a grade GS-9 Revenue Officer, applied under the vacancy announcement. The district office decided not to select the sole candidate for the position and attempted to obtain additional applicants by extending the vacancy announcement to a nation-wide level. Under the nation-wide vacancy announcement only one additional candidate, Mr. Bogar, applied for the Supervisory Revenue Officer position. The district office has advised us that Mr. Bogar was selected for the Supervisory Revenue Officer position as a result of the skills and knowledge Mr. Bogar acquired as a Program Analyst with the national office. The selecting officials at the district office believed that the existing need was to fill the vacant position with a candidate who had demonstrated the ability to assume increasing responsibility and that Mr. Bogar's work record reflected such an ability to assume a considerable amount of responsibility. Apparently, Mr. Bogar is currently acting in the capacity of a Chief of Branch at the Greensboro district office. The Director of the Greensboro district office has recommended that salary retention be granted to Mr. Bogar based on his belief that the district office had a special recruitment need in filling the Supervisory Revenue Officer vacancy. The IRS Southeast regional office does not believe that Mr. Bogar is entitled to salary retention.

Under 5 U.S.C. § 5337 (1976) an employee who is reduced in grade, may under certain conditions, retain his previous rate of pay for 2 years, if the reduction in grade was not at his own request. See also 5 C.F.R. Part 531, Subpart E (1977) and Federal Personnel Manual Supplement 990-2, Book 531, subchapter 5d.

In our decision Matter of Faye Abu-Ghazaleh, 56 Comp. Gen. 199 (1976) we considered the propriety of salary retention of an employee of the Defense Supply Agency who was demoted as the result of being accepted for a position which the employee had applied for under a job opportunity announcement. Since the Civil Service Commission is granted authority to issue regulations to implement 5 U.S.C. § 5337, in Abu-Ghazaleh, *supra*, we requested the Commission's views on the matter of salary retention. The

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Commission's opinion, in pertinent part is set forth as follows:

"As provided in 5 U.S.C. 5337, 'an employee * * * whose reduction in grade is not * * * at his request * * * is entitled to basic pay at the rate to which he was entitled immediately before the reduction in grade * * * if otherwise eligible. When a demotion is initiated by the agency for the primary benefit of the agency, it is not taken at the employee's request, even though the employee may have applied through merit promotion procedures or the employee may have requested the agency to consider his personal situation. On the other hand, if the demotion is initiated by the employee for his personal advantage (e.g., dissatisfaction with present employment, unable to perform duties, or health), salary retention is inappropriate. However, it cannot be assumed, simply because management initiates recruitment by advertising a vacancy, that it has initiated the demotion of an employee, and therefore that that action automatically entitles an employee to salary retention. To make such an assumption would effectively negate the statutory proviso 'at his request' by filling all positions through established vacancy announcement machinery. On the other hand, it cannot be assumed that because an employee applies for consideration of a vacant position that the action is taken at the employee's request, that it falls within the exclusion criteria of the law, and that the employee is automatically ineligible for salary retention. In order to deny salary retention, it must be established that the agency does not have a special recruitment need and that this is not in fact the paramount factor leading to the downgrading."

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The IRS Southeast regional office has denied Mr. Bogar salary retention based on the IRS national office's interpretation of a special recruitment need as one involving scarce knowledges, skills, and abilities necessitating unusual recruitment efforts.

In view of the record before us, demonstrating the difficulty the Greensboro district office had in attracting a total of two qualified applicants for the vacant Supervisory Revenue Officer position and the fact that Mr. Bogar was apparently the sole applicant who possessed the skills and knowledges desired by the district office's selecting officials we cannot conclude that the IRS has established that it did not have a special recruitment need in this instance which was the paramount factor leading to Mr. Bogar's downgrading. We therefore conclude that Mr. Bogar should not have been denied salary retention under 5 U.S.C. § 5337 in connection with his employment with the Greensboro district office. Accordingly, Mr. Bogar is entitled to salary retention for the period in question and the claim may be paid if he otherwise met the conditions in 5 U.S.C. § 5337.


Deputy Comptroller General
of the United States